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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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SUMMARY RECORD OF THE 34th MEETING IN 1990

Held at the Palais des Nations, Geneva,
on Friday, 30 November 1990, at 10 a.m.

Chairman: Mr. KOUZNETZOV

CONTENTS

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant (continued)

Luxembourg (continued)

Organization of work (continued)

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS (agenda item 7)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Luxembourg (E/1990/5/Add.1) (continued)

1. The CHAIRMAN invited the delegation of Luxembourg to continue its replies to the list of issues to be taken up in connection with that country's initial report on articles 1-15 of the Covenant (E/C.12/1990/Misc.11).

2. Mr. THILL (Luxembourg), replying to the question as to whether there were any social security benefits in Luxembourg that were not available to foreigners, said that foreigners were entitled to equality of treatment without exception, on condition that they exercised an occupation or profession or had a contract of employment.

3. In reply to the question as to whether maternity payments were independent of the income of the mother or father of the child, he said that a maternity allowance had been introduced in 1973. It was paid throughout the legal period of maternity leave and was equivalent to the salary that the mother would have earned during that period. Payments to cover medical expenses were made by the health insurance scheme and later reimbursed by the State. Maternity payments were therefore not independent of the mother's income. Furthermore, under an Act of 1980, a maternity allowance was paid to self-employed workers, who received a fixed sum of 800 francs per week adjusted according to the cost-of-living index.

4. The maternity allowance was payable to any pregnant woman, any woman who gave birth in Luxembourg or any woman who had lived there for a year before the birth of her child. It was also payable to women who did not meet the residence requirement if the husband had been lawfully resident in Luxembourg for the preceding three years. It was paid for up to 12 weeks if the mother breast-fed the child.

5. Maternity allowances both for salaried and self-employed workers could not be paid concurrently with a disability pension or other social security benefit that replaced a wage.

6. In his earlier statement he had already replied to the questions as to whether there were any programmes for mothers wishing to take leave of absence in order to raise their child, whether their jobs were guaranteed and what was the situation of such women in the social security system.

7. In reply to the question on housing, he said that low-cost housing was scarce in Luxembourg. Occasionally the authorities discovered dwellings that did not meet minimum standards and were occupied by clandestine migrant workers without residence or work permits who were in a precarious situation from the social security viewpoint. However, when such persons were discovered, the authorities did ensure that they were registered for social security.

8. To cope with the scarcity of low-cost housing, the Government had taken steps to promote home ownership and to provide housing for the least advantaged sectors of the population.

9. Under an Act of 1955, amended in 1987, there were local rent control committees consisting of three members, representing the local authority, landlords and tenants in each commune. Rent disputes were referred to the committee, which tried to reconcile the parties. If no agreement could be reached, or if one party failed to appear, the committee set the rent on the basis of the lease, the age and surface area of the dwelling, etc. An appeal against that decision could be made to the local justice of the peace, and his decision in turn could be appealed against.

10. Residential rents were much more severely controlled than commercial rents, which in theory were unrestricted. The law provided for possible rent adjustments every three years.

11. A distinction was made by law between rents for older buildings and rents for more recent buildings, but the legislation did not apply to villas, mansions or luxury dwellings of seven rooms or more occupied by a single family.

12. Low-cost housing assistance was given in several ways. The law provided for assistance for the purpose of converting or improving property. Moreover, when borrowers were unable to provide sufficient guarantees to a lending institution, the State was empowered to act as a mortgage guarantor, but only for borrowers with a housing savings account or for those who could provide proof of regular savings over the previous three years.

13. Housing subsidies were available, but only for families with an income below a certain level and for non-luxury housing, and on condition that the dwelling was inhabited by the family concerned and that the family did not own or have the use of another dwelling.

14. Interest subsidies could be granted to persons who borrowed to build or buy a dwelling, and varied according to income, number of children, etc. Under 1969 legislation, housing and building subsidies were granted by local authorities. An autonomous body known as the Moderate-Cost Housing Fund had been established to acquire, for sale and rent, building land and low-cost housing for which there was an urgent need. The Fund had embarked on several major projects.

15. As to whether there were any homeless people in Luxembourg, unless one counted the persons he had already mentioned who lived clandestinely in very substandard housing, there were in principle none. There were private charitable and local authority centres that were obliged by law to house any homeless people.

16. Turning to the question as to how the medical insurance system coped with the problem of extreme increases of expenses in the medical sector, he said that the medical insurance branch of the social security service was in chronic difficulty. Various cost-cutting measures had been adopted. Insured persons now had to pay part of the cost of their food and accommodation when

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in hospital; the contribution ceiling had been raised from four times to five times the minimum wage; and there had been a reduction of 5 per cent in the sales price of medicines and a reduction in the cost of medical consultations.

17. However, those steps had not succeeded in reducing the cost of the health service. Doctors tended to over-prescribe and to order courses of treatment designed to maintain their incomes. Moreover, in Luxembourg, as indeed throughout Europe, there were too many doctors, their fees were high and their unions resisted proposals to accept fees on a contractual basis for certain forms of recurring treatment. The influence of the medical profession was increasing, and retirement homes, for instance, now came under medical control. An attempt had been made to introduce a criterion of efficiency of cure, but little progress had been made since it was hard for doctors to give an opinion on the treatment prescribed by their fellows.

18. Luxembourg was in the process of introducing measures, like those adopted in France, under which the frequency of prescription of various medicines was monitored. The freedom of physicians to prescribe medication was an essential principle of medical ethics in Luxembourg, and the measures were intended merely to promote therapeutic discretion.

19. There had been some discussion on the possibility of instituting insurance coverage for major risks alone, but no such action had in fact been taken. On 1 January 1991, insurance contributions from citizens would be increased: it was hoped that that measure would help to overcome the large deficit in insurance revenues for the State.

20. Ample facilities were already available for health care, particularly for elderly members of the population, and more were being built.

21. Mr. SIMMA thanked the delegation of Luxembourg for an excellent presentation that could serve as a standard for other States submitting their initial reports. The initial report of Luxembourg (E/1990/5/Add.1) was mainly confined to an enumeration of legislative provisions, and the supplementary information in the oral statement was therefore all the more valuable. It would be useful to have the oral presentation in written form for incorporation in the Committee's files.

22. Most foreigners working in Luxembourg were apparently nationals of countries members of the European Community and were therefore covered by Community legislation on freedom of movement. He would be interested to know the comparative figures for migrant workers from the European Community and from non-Community countries, and to be informed whether working conditions and social security provisions differed for those two groups.

23. Mr. NENEMAN said that, although the Luxembourg report had not been informative enough, the delegation had given a splendid oral presentation filled with useful insights and hard facts.

24. He would be interested to know whether it was the employer or the State or some other institution that paid for the special leave that workers could take for sports or educational purposes. The "meals on wheels" scheme for the elderly was an original concept and he would appreciate hearing more about it.

He would also like to know who was responsible for providing in-school instruction on religious or secular ethics, and how it was determined which children would be given which type of instruction.

25. It would be interesting to know what was being done to ensure that secondary and higher education was gradually made free of charge, as stipulated in the Covenant. Information on the situation with regards to AIDS, including measures taken to ensure that the human rights of infected individuals were not violated, would also be welcome.

26. Statistics showed that Luxembourg had a relatively high rate of alcohol consumption. Were any programmes being carried out to curb such consumption? It also appeared from statistics that neoplasms and circulatory disorders were major causes of death among both the male and female populations. Was anything being done to combat those diseases?

27. Mr. KONATE thanked the Luxembourg delegation for an oral presentation that filled many of the gaps left by the report. He agreed that it would be useful to have it in writing.

28. It had been indicated that, while individuals could invoke European Community legislation before the courts, they could not do the same with the Covenant. Yet most of the rights set out in the Covenant were incorporated in Luxembourg's Constitution. He would like to know why such a restrictive interpretation of the Covenant's applicability in Luxembourg's judicial system had been formulated.

29. Paragraphs 13, 16 and 17 of the report referred to legislation, but in far too general terms. It would be useful to see copies of the texts concerned or to have a fuller description of them.

30. Paragraph 27 of the report outlined what appeared to be a restrictive interpretation of the right to strike that might be at variance with article 8 of the Covenant. He would like to know what was the definition of a "legitimate and lawful" strike, as referred to in the High Court decree described in that paragraph, and whether article 11 of the Constitution set out any preconditions for the exercise of the right to strike.

31. In connection with article 12 of the Covenant on the right to physical and mental health, he would appreciate more information on the bill on occupational medicine referred to in paragraph 62 and asked whether it had already been adopted.

32. The statement in paragraph 63 that endemic and epidemic diseases were not matters of major concern required clarification. Even if there were no serious problems with such diseases, surely preventive efforts must be under way.

33. He agreed with Mr. Simma that it would be useful to know whether there were any differences in the treatment of migrant workers as between nationals of European Community countries and those from non-Community countries.

34. Mr. FOFANA noted that the report had been prepared two years previously and inquired about the evolution of employment and unemployment in the intervening period. He would also welcome information on how the real wages paid by enterprises were taken into account in determining the guaranteed minimum income.

35. Mrs. JIMINEZ BUTRAGUEÑO said that, like many European countries, Luxembourg had a large proportion of elderly people in the population. She would like to know whether pensioners were as able to meet basic needs as were wage-earners.

36. She also asked whether the law provided for paternity leave and whether family allowances were adequate to cover the cost of bringing up a child.

37. Noting from paragraph 51 of the report that consumer assistance was available for employed persons, she inquired whether such assistance could also be obtained by the unemployed and retired people.

38. Mr. MUTERAHEJURU said the oral presentation by the delegation of Luxembourg showed that the country had an excellent record in implementing the rights set out in the Covenant.

39. Paragraph 48 of the report indicated that the Government regarded the family as the fundamental unit of society, but what constituted a family remained to be clarified. Was marriage a prerequisite, for example? He would like to have figures on the marriage and divorce rates.

40. In paragraph 57 it was stated that the guaranteed minimum income for a single person was three quarters of the minimum legal wage for an unskilled worker. Did that permit the recipient to meet his basic needs? Did it enable him to provide education and child care for his children? What was the effect of the guaranteed minimum income on the willingness of the unemployed to seek work?

41. Mr. RATTRAY said the report had not facilitated a meaningful assessment of how the rights set out in the Covenant were being realized in Luxembourg; he was therefore all the more grateful for the excellent oral presentation.

42. The fact that individuals could invoke the International Covenant on Civil and Political Rights before the courts, but not the International Covenant on Economic, Social and Cultural Rights, indicated that the second set of rights was viewed as much less important. In that connection, he would like to know whether there had been public discussion during the preparation of the report, whether trade unions and other institutions had taken part in it, and whether the report had been widely disseminated.

43. Paragraph 58 indicated that housing was generally the most expensive item in a household budget - hence the importance of ensuring affordable housing for all sectors of the population, including individuals receiving the guaranteed minimum income. He would like to know whether any benchmarks had been established for the quality of housing which would be regarded as meeting minimum standards and whether those benchmarks had been related to the question of affordable housing. He also asked whether there were any statistics indicating the extent to which the available housing did not measure up to such benchmarks.

44. With regard to the right to strike, he asked whether law or practice required a strike ballot before that right could be exercised. He would also like to know whether persons going on strike before the conciliation procedures had been exhausted could be sent to prison.

45. Mr. MRATCHKOV said that the report by Luxembourg set out the legal framework within which the rights set forth in the Covenant were exercised. However, it said nothing about the context of such legislation and made no mention of how the provisions of the Covenant were implemented in practice. He realized that Luxembourg was a highly developed State from the economic and social standpoints, but members would nevertheless like to know whether it had encountered any problems in implementing the provisions of the Covenant and, if so, how it had dealt with them.

46. Another matter related to the legal value of the ratification of the Covenant. It was difficult to see where the Luxembourg Government stood on that point because, on the one hand, it stated that all international treaties, once ratified, became an integral part of the domestic legal order and, on the other, it indicated that that was not the case with regard to the International Covenant on Economic, Social and Cultural Rights because under article 2 of the Covenant, legislation must be enacted to give effect to the rights laid down in the Covenant. Yet the Covenant contained many self-executing provisions. He would welcome clarification on that point.

47. Referring to paragraph 7 of the report, he said that he would appreciate additional information on the legislation governing protection against arbitrary dismissal, in particular whether provision was made for the right of workers to be reinstated or to claim damages.

48. On paragraph 10 (d), he would like more details on the measures taken to adjust remuneration to variations in the index published by the Government.

49. With regard to freedom of association, he aksed what sort of system existed to determine which unions were most representative and, what was the percentage of union membership among workers in Luxembourg.

50. As to the right to physical and mental health, information would be appreciated on the respective proportions of the health sector constituted by public and private medicine.

51. Mr. SPARSIS, noting that Luxembourg had ratified ILO Convention No. 98, asked whether any relevant observations had been made by that organisation's Committee of Experts. He would also like to know whether Luxembourg had ratified ILO Convention No. 151 concerning the public sector and, if so, whether the ILO Committee of Experts had had any comments to make on the application of that instrument by Luxembourg. In that connection, he would welcome information on the collective bargaining machinery in Luxembourg and the negotiation of agreements in the public sector. Had there been any difficulties in Luxembourg in having some agreements freely negotiated in the public sector by the executive and the union concerned? Had there been any cases where, for financial reasons, the legislature had refused to ratify an agreement submitted to it after lengthy and arduous negotiations between the executive and the union and, if so, what sort of liaison machinery had been established on a constitutional basis to ensure that collective agreements freely negotiated in the pubilc sector had a chance of being ratified?

52. With regard to paragraph 27 of the report, he inquired who decided whether the conciliation procedures had been exhausted and whether there was any time-limit within which that decision had to be taken.

53. Ms. TAYA asked whether there was any limitation on the period of stay of foreign workers in Luxembourg and whether the Government pursued a policy allowing them to become integrated into the population as citizens.

54. Mr. FOFANA said that he would like statistics concerning the percentage of natural children as compared with children born in wedlock and also information on the treatment of juvenile delinquents.

55. Mr. WEITZEL (Luxembourg) asked whether it would be possible for his Government to submit replies in writing to the many questions put to his delegation. The report, which had been prepared by the Ministry of Foreign Affairs in co-operation with other Ministries, was essentially concerned with legislation rather than the practical implementation of the Covenant in Luxembourg. An effort had been made to remedy those shortcomings orally, but there were still some issues that had to be addressed.

56. His delegation would be able to answer some but not all of the questions immediately.

57. Replying to a question by the CHAIRMAN, Mr. WEITZEL (Luxembourg) said that his delegation would prefer members of the Committee to raise questions relating to articles 13-15 at the present time.

58. Mr. SIMMA said he understood that there had recently been a debate in Luxembourg about whether religious education should be removed from the school curriculum and cease to be a subject for examinations. He asked whether any decision had been taken on the matter and, if so, what the reasons for that decision had been.

59. Mr. FOFANA asked what provision Luxembourg had made for helping adult refugees and migrant workers who had not received any basic education in their own countries. He also asked whether there were regional inequalities as far as access to cultural facilities was concerned and, if so, whether there were any plans to redress such inequalities.

60. Mr. MUTERAHEJURU asked what influence Luxembourg's geographical position and demographic situation had on its culture and environment, in view of the high percentage of migrant workers.

61. Mr. MRATCHKOV said he would like to have more information about the number of private schools, the proportion of schools which they represented in the educational system and their facilities. He also inquired about the number of religious schools and the number of students enrolled in them.

62. Mr. RATTRAY requested information about the drop-out rate in compulsory education and inquired how many students completed primary and secondary education. He also asked what percentage of the children who were required by law to attend school actually did so. The delegation of Luxembourg had mentioned a decrease in the education budget; some additional information about what proportion of the national budget was now allocated to education

would be appreciated. Referring to paragraph 66 of the report, he asked whether religion was a compulsory subject in schools. If it was, what religion was taught and how did that tally with religious freedom?

63. Mrs. JIMENEZ BUTRAGUEÑO, referring to paragraph 87 of the report, inquired about the exact meaning of the phrase "sin la participación directa de los alumnos" appearing in the Spanish version. She hoped that the representatives of Luxembourg would provide more information on the application of article 15 of the Covenant.

64. Mr. SIMMA said that the message from the Government to Parliament which the representative of Luxembourg had quoted had stated that the Covenant in its entirety did not contain self-executing provisions; it created only reciprocal obligations between States. That was strange, as the European Commission of Human Rights had developed case law according to which the European Convention on Human Rights was a public and objective law of Europe. In the case of Ireland v. the United Kingdom, the European Court of Human Rights had ruled that the European Convention, over and above reciprocal obligations, created an objective set of standards. He inquired what the difference was between the legal nature of that Convention and the Covenant in view of the fact that articles 2 (2), 3, 7 (a) (i), 8 and 13 (2) (a) had to be considered as self-executing. On what criteria did the Luxembourg Government base its difference of approach to the European Convention and to the Covenant?

65. The CHAIRMAN said that the oral questions put by members of the Committee would be reflected in the summary record of the meeting. The relevant summary records would be sent to the Luxembourg Government as soon as they became available.

66. Mr. Thill and Mr. Weitzel (Luxembourg) withdrew.

ORGANIZATION OF WORK (agenda item 4) (continued)

67. Ms. KLEIN (Representative of the Secretary-General) recalled that the Committee, having discussed the case of States parties which had requested postponement of the consideration of their reports for as many as five times, had decided that, on the third occasion that a report was scheduled for examination, the Committee would proceed to take it up, whether or not a representative of the State party concerned was able to be present, unless there were highly exceptional circumstances. The Secretariat had immediately contacted the States parties particularly concerned, Afghanistan and the Islamic Republic of Iran, to inform them of the Committee's decision.

68. The Mission of the Islamic Republic of Iran had replied that it would send a delegation, and examination of that country's report had been scheduled for 6 December.

69. The Afghan Mission had submitted a note verbale dated 29 November 1990 stating that the Government of Afghanistan had always co-operated with, and would continue to respect its obligations towards the Committee and that the co-operation of the Government with, Professor Ermacora, Special Rapporteur of the Commission on Human Rights, bore out that claim. However, the note continued, the situation was complicated by the continuation of the war, foreign intervention and the violation of human rights by armed opponents and

extremists. As a result, the Government had been obliged to take exceptional measures to defend the country and, in the circumstances, it was difficult, if not impossible, to submit a balanced report which accurately reflected the position with regard to economic, social and cultural rights nation-wide. The Government had taken all necessary steps to protect those rights, which were reflected in domestic legislation, including the Constitution of Afghanistan. The note concluded with a promise to submit a detailed report as soon as possible.

70. The Syrian Arab Republic had requested, for the first time, that consideration of its report should be postponed to the Committee's next session.

71. Turning to the case of Panama, she said that on 26 November, it had not been certain whether or not a Panamanian delegation would present at least one of the three reports pending consideration. Before the current meeting, the Panamanian Mission had informed the Secretariat that it was sending a note verbale to the effect that additional information had been received reflecting the situation under the new Government relating to the initial report on articles 6-9 and to the second periodic report on articles 10-12 both of which had been submitted several years previously. The information was some 50 pages in length and hence could not be made available to the Committee immediately. With regard to the initial report on articles 13-15, which had been submitted early in 1990 the Government had not yet forwarded replies to the list of issues or given the Mission instructions to appear before the Committee. The Mission had therefore requested a postponement.

72. Mr. ALSTON said he wished to present to the Committee a draft proposal on the Afghan case, formulated in English. He thought that there would be general agreement in the Committee, that there was no direct relationship between the procedure of the Commission on Human Rights and that of the Committee on Economic, Social and Cultural Rights and that co-operation with the Special Rapporteur of the Commission had no bearing on a State party's obligations under the Covenant. Secondly, in periods of emergency, it was all the more important to report to the Committee because it was then that human rights were most under threat. The General Assembly and the Commission on Human Rights had recently stressed the need to impose a strict limit on derogations in time of public emergency, and it had never been suggested that a State party could deviate from its obligation to report during such a time. Furthermore, the emergency in question had been in existence for over a decade and it would be inappropriate by all international standards for the Committee to seem to indicate that there could be justification for suspending the reporting obligation. He had therefore, with the assistance of several members of the Committee, drafted the following text, which was designed, not to pass judgement, but to show that the Committee was not in a position legally to abrogate its responsibility to consider reports from States parties:

> "The Committee on Economic, Social and Cultural Rights, having considered the note verbale of 29 November 1990 transmitted by the Permanent Mission of Afghanistan, takes note of the abnormal situation prevailing in the country and notes with regret that the Government is unable to be represented at the Committee's fifth session in order to engage in oral dialogue with the Committee.

Nevertheless, since this is the fifth consecutive session of the Committee at which the report of Afghanistan has been scheduled for consideration, the Committee decides, in order to enable it to accomplish its function of monitoring the implementation of the Covenant and in accordance with its procedure, to proceed to examine the report of Afghanistan at its present session notwithstanding the absence of representatives of the State party.

The Committee requests its Secretary to inform the Permanent Mission of the meeting at which the report will be considered in the hope that it might prove possible for a representative to be present."

73. He suggested that the Committee might wait to see the precise terms of the note verbale from Panama. If, however, it had not arrived by early the following week, the Committee would have to take a decision on the matter.

74. Mr. MARCHAN ROMERO suggested that the order of the last part of the first sentence in the second paragraph might be improved if it read "... the Committee, in accordance with its procedure, decides to proceed to examine the report of Afghanistan ... representatives of the State party, in order to enable it to accomplish its function of monitoring the implementation of the Covenant".

75. Mr. ALSTON accepted Mr. Marchan Romero's amendment.

76. The CHAIRMAN said that, if there was no objection, he would take it that the Committee was prepared to accept the draft proposal, as amended.

77. It was so decided.

78. The CHAIRMAN said that the Committee might consider the report of Afghanistan on Monday, 3 December. The Secretariat should therefore communicate the decision to the Permanent Mission of Afghanistan immediatley.

79. Mr. MRATCHKOV wondered whether such short notice would give the Permanent Mission of Afghanistan time to arrange to present the report.

80. Mr. SIMMA suggested that consideration of the report of Afghanistan should be deferred to Thursday, 6 December.

81. It was so decided.

The meeting rose at 1.05 p.m.